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Joint Inspection Unit

Capital/refurbishment/construction projects across the United Nations system organizations

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "Capital/refurbishment/construction projects across the United Nations system organizations" (see A/70/368).

* A/70/150.



Summary

In its report entitled "Capital/refurbishment/construction projects across the United Nations system organizations" (see A/70/368), the Joint Inspection Unit examines the practices, procedures and modalities used by organizations of the United Nations system for the refurbishment and construction of administrative buildings.

The present note reflects the views of the Secretary-General and organizations of the United Nations system on the recommendations provided in the report. The views have been consolidated on the basis of input provided by member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported some of its conclusions.

I. Introduction

1. In its report entitled "Capital/refurbishment/construction projects across the United Nations system organizations" (see A/70/368), the Joint Inspection Unit examines the practices, procedures and modalities used by organizations of the United Nations system for the refurbishment and construction of administrative buildings.

II. General comments

2. Organizations of the United Nations system welcome the report. They appreciate its comprehensive nature and welcome the best practices that it presents for capital, refurbishment and construction projects. Whereas organizations generally find the recommendations useful, their comments, set out below, are intended to clarify various points.

3. Organizations note that, when describing the common practice of adhering to local construction codes (see *ibid.*, para. 54), it would be more appropriate to state that, in the light of both the privileges and immunities of the United Nations system organizations and of those organizations' desire to ensure the observation of appropriate safety standards, the common practice of such organizations is to take into account the local building codes and the advice of the Department of Safety and Security with regard to safety and security, environmental standards, fire protection and energy conservation.

4. Organizations express support for the concept of having staff members from support departments such as procurement, legal affairs, safety and security and facilities management integrated with capital construction project offices (see *ibid.*, para. 74). The Secretariat in particular has found that having specialists from those areas embedded within the Office of the Capital Master Plan facilitates discussion, enhances cross-departmental cooperation and expedites decision-making among the various offices that play vital roles in project management.

5. With regard to the section entitled "Legal guidance, monitoring and support", organizations wish to clarify in particular that the Office of Legal Affairs does not advise the Department of Management "what to do contractually from a practical point of view" (see *ibid.*, para. 105), but instead provides advice on the form and content of contracts to fit the particular scope of work and to protect the legal interests of the Organization. Furthermore, it is incorrect to state that the Procurement Division adjusts the drafts of contracts "to get the consent of [the Office]" (see *ibid.*, para. 106), but that more accurately the Division seeks the Office's legal advice on the legal aspects of a contract.

6. Regarding the observation that the Office of Legal Affairs has not provided "guidance documents explaining which type of contract was recommended and which standards should apply" (see *ibid.*, para. 106), the Secretariat notes that the Office provides a wide spectrum of advice, services and assistance on legal matters affecting the operation and activities of the Organization, including those involving construction operations. The Office of Central Support Services routinely consults the Office of Legal Affairs regarding how best to structure construction-related contracts and how to resolve issues arising from construction project planning and management. The Office of Legal Affairs encourages all offices under its authority

to consult it for legal guidance on major construction projects, especially during the pre-planning stages of such projects, and in general as early as possible and before any contract documents are sent out as part of request for proposal processes, given that such consultations normally improve project risk management and lead to the creation of a comprehensive and cohesive set of design and construction contract documents that best protect the interests of the Organization. Accordingly, the Office of Legal Affairs provides legal advice and guidance on a case-by-case basis, taking into account the specific details of each capital, construction or refurbishment project and paying careful attention to the particular requirements of a given project and the unique status and requirements of the Organization, in order to address the essential requirements for each project.

7. Organizations wish to clarify that the fact that a contract is not adjusted to local standards in and of itself does not lead to the conclusion that the contract included inconsistencies and contradictions or that the contract is difficult to manage (see *ibid.*, para. 107). They note that local standards that are prevalent in any given geographical area may not be optimal for protecting the interests and limiting the liability of the Organization. Furthermore, local standards often do not address all the specific requirements that are essential to the Organization and its contractors. Therefore, when developing and negotiating a contract between the Organization and a contractor, including construction service providers, caution should be exercised when incorporating local terms and conditions into contracts to ensure that such terms and conditions reflect the requirements that are essential for and particular to the Organization.

8. Organizations express their appreciation for the recognition given to the use of local legal expertise (see *ibid.*, para. 108), with organizations noting that it is important to have local legal expertise available with respect to construction projects given the complexity of construction and the significant role played by local building codes and the practices of local tradespeople in project management. For example, whereas the Office of Legal Affairs has provided significant legal advice to the United Nations Office at Geneva with respect to the pre-planning and contract negotiations relating to its strategic heritage plan, the Office of Legal Affairs has advised the United Nations Office at Geneva to arrange for local Swiss lawyers to be made available to the project management team for consultation. Regarding the capital master plan, the Secretariat retained the services of an outside law firm with which the Office of Legal Affairs was able to consult, especially regarding complex legal issues that involved the peculiarities of New York real estate law and the customs of local construction practices in the city. In the case of the capital master plan, the outside law firm has assisted the Office of Legal Affairs with some aspects of contract negotiations and some construction claims.

9. Organizations also express their appreciation for the recognition given to the value of the "design-build" contractual arrangement (see *ibid.*, para. 112), although they suggest that the report could have been more comprehensive by including the disadvantages to that approach.

10. Organizations agree with the suggestion that contracts include "adequate provisions with regard to variations and adjustments, risk and responsibility, force majeure, delay damages, claims, disputes and arbitration" (see *ibid.*, para. 113) and note that, for complex construction contracts, it would be appropriate for a project management team to consult the relevant legal office to determine the best form of

contract for a particular project. Whereas the report provides some information on the issue, it could have been strengthened with descriptions of the contract types and an indication of all the major alternatives. Furthermore, organizations disagree with the suggestion made in the report on the inclusion of "practice notes and flow charts for project processes as annexes to the contract", and instead suggest that notes and charts not be made part of the contract and thereby given legal significance. Organizations suggest that they be separately issued as contract management documents.

11. Many organizations take note of the assertion regarding the guaranteed maximum price contract (see *ibid.*, para. 114), but advise that it is not necessarily accurate to state that those contracts are "the most beneficial" to the organizations. They note that a guaranteed maximum price contract can be costly if it is amended multiple times with owner-driven change orders.

12. Organizations take note of the suggestions regarding the one-year "defects notification period", but note that that period is as defined in the contract and could be defined as beginning upon "substantial completion" of the work (see *ibid.*, para. 148). They also note that it could expire before "final completion" of the work if the contractor is slow to finish, but that, ideally, it should begin upon final completion. Organizations suggest that project managers, before entering into construction management contracts, consider whether extended manufacturer warranties are to be purchased by the contractor and turned over to the United Nations upon final completion with respect to specific installed equipment. In addition, organizations note that the statement that "final completion is the end of the contractor's obligation or responsibility" (see *ibid.*, para. 151) may not be entirely accurate, and that the contractor should have continuing obligations to return and make repairs free of charge, pursuant to warranty obligations, once the construction reaches final completion.

13. Organizations suggest that environmental, energy-efficient and sustainable aspects be incorporated into capital master plans with the objective of achieving buildings that are green, work-friendly, flexible and accessible to all, including persons with disabilities. Refurbishment projects should be undertaken with the aim of improving the performance of the buildings and the quality of the work environment by creating healthy, cost-effective, safe and attractive office spaces.

III. Specific comments on recommendations

Recommendation 1

The executive heads of the United Nations system organizations should establish close monitoring and periodic reporting mechanisms for capital/refurbishment/construction projects throughout all project phases.

14. Organizations support recommendation 1.

Recommendation 2

Taking into account the high cost and high risk of capital/refurbishment/construction projects, the legislative/governing bodies of the United Nations system organizations should exercise their monitoring and oversight role with regard to their respective projects on an ongoing basis, including during the

pre-planning, planning, executing and completing phases, ensuring cost efficiency and the achievement of the overall goals of the projects.

15. Noting that recommendation 2 is directed at legislative and governing bodies, organizations support the call for those bodies to exercise their monitoring and oversight role with regard to their respective projects on an ongoing basis.

Recommendation 3

The Secretary-General, in his capacity as the Chair of the United Nations System Chief Executives Board for Coordination, should request the Chair of the High-level Committee on Management to establish a working group on facilities management that emphasizes issues related to capital/refurbishment/construction projects.

16. Organizations responded to recommendation 3, by noting that the structure of the High-level Committee on Management already includes networks that deal with the financial, procurement, information and communications technology and human resources implications of all United Nations system operations, including initiatives relating to facilities. That structure ensures swift and targeted action and light transaction costs, and any specific issues relating to facilities can be brought to the attention of the Committee by the representative of the relevant member organization without the need to establish a new structure.

17. In addition, organizations point out that there is an ongoing existing initiative, the Inter-Agency Network of Facilities Managers, which discusses best practices, common approaches and experiences pertinent to facilities management. The Network, in addition to members of the United Nations system, also includes members from outside the United Nations system whose contributions have been useful and valuable. The functions and outputs of a new working group would overlap with the existing ones of the Network and reporting from such a working group to the High-level Committee on Management would be substantially more demanding, and require additional resources, than coordinating and managing the existing Network. In addition, the framework of such a working group would be narrower than that of the Network, given that its membership would be limited to United Nations members, which are already participating in the Network.

Recommendation 4

The executive heads of the United Nations system organizations should ensure that the 19 best practices presented in the present review are followed when undertaking capital/refurbishment/construction projects.

18. Organizations accept recommendation 4 and welcome the list of best practices presented, which they note provides a useful guide during the pre-planning, planning, executing and completing phases of capital, refurbishment, and construction projects. Organizations in particular cite No. 16, regarding dedicated committees, and support the suggestion to establish review bodies on a project basis, keeping in mind that projects of that nature may require special procedures, such as specific procurement policies and authority delegated at a higher level.